



# WISCONSIN LEGISLATURE

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July 14, 2022

Senator Nass and Representative Neylon  
Co-chairs of the Joint Committee for Review of Administrative Rules  
*Sent via email*  
Sen.Nass@legis.wisconsin.gov  
Rep.Neylon@legis.wisconsin.gov

Dear Senator Nass and Representative Neylon,

Yesterday, a staff attorney for the Wisconsin Election Commission (WEC) notified the Joint Committee for Review of Administrative Rules (JCRAR) of a newly promulgated emergency rule to create Wis. Adm. Code EL Chapter §6.06 relating to missing or insufficient witness addresses on absentee certificate envelopes.

In 2016, WEC issued guidance stating that clerks could cure perceived deficiencies of absentee certificate envelopes, sometimes without even contacting the voter. In January of 2022, JCRAR ordered WEC to withdraw the guidance or to promulgate its guidance as a rule if the Commission believed it has the authority to issue such a rule. WEC seeks to codify that guidance. However, the agency does not have the authority to do so.

Agencies are required to promulgate rules through Wisconsin's Administrative Procedure Act, which reads in relevant part: "No agency may implement or enforce any standard, requirement, or threshold...unless that standard, requirement, or threshold is **explicitly required or explicitly permitted by statute...**" Wis. Stat. §227.10(2m) (emphasis added). Further, the law states, "[n]o agency may promulgate a rule which conflicts with state law." Wis. Stat. §227.10(2). The statute WEC is interpreting reads, "If a certificate is missing the address of a witness, the ballot may not be counted." Wis. Stat. §6.87(6d). According to the scope statement, WEC's rule will, "define what constitutes a complete address, mandate that clerks take corrective measures to try and remedy address insufficiencies, detail what clerks are lawfully able to self-correct, outline how clerks should perform outreach to voters and witnesses, allow for the return of the certificate for correction, and specify when voters or witnesses must appear to correct the certificate in person." WEC does not cite any explicit statutory authority that allows it to promulgate a rule covering all of these issues.

There may be other legal deficiencies with the proposed rule and its promulgation, but given the timely nature of election guidance, we respectfully request JCRAR meet to suspend this emergency rule. Orderly, consistent, lawful elections are crucial for Wisconsin.

Sincerely,

Devin LeMahieu  
Senate Majority Leader

Robin Vos  
Assembly Speaker

Tyler August  
Assembly Speaker Pro Tempore